

THE HONORABLE JOHN H. CHUN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

AVELARDO RIVERA and YASMINE
ROMERO, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

AMAZON WEB SERVICES, INC., a Delaware
corporation,

Defendant.

No. 2:22-CV-00269-JHC

AMAZON WEB SERVICES, INC.'S
UNOPPOSED MOTION TO
MAINTAIN UNDER SEAL EXHIBIT
13 FILED IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL

AND ORDER

NOTED ON MOTION CALENDAR:
AUGUST 31, 2023

I. INTRODUCTION

Pursuant to Civil Local Rule 5(g) and the parties' Stipulated Protective Order (Dkt. No. 55), Defendant Amazon Web Services, Inc. ("AWS") respectfully submits this Unopposed Motion to Maintain Under Seal portions of the rough Deposition Transcript of AWS's 30(b)(6) witness Sean Simmons ("Simmons Transcript"), which was submitted as Exhibit 13 (Dkt. 83-13) in support of Plaintiffs Motion to Compel Responses to First Set of Interrogatories and Requests for Production and Certain 30(b)(6) Testimony ("Motion to Compel"). *See* Dkt. 83.

The Simmons Transcript contains information AWS has designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" under the Protective Order. Dkt. 55. Specifically, these documents contain (1) information about how AWS's proprietary machine learning models underlying its Rekognition service are trained and operate, (2) information about the architecture and processes underlying AWS's Rekognition service, and (3) the identity and number of AWS Rekognition customers. These categories of information are confidential, proprietary, and sensitive business information that, if disclosed to the public, would cause severe competitive and other harm to AWS's Rekognition business.

Given that the Simmons deposition occurred only 6 days before Plaintiffs' filed their Motion to Compel, AWS had not yet provided confidentiality designations for the transcript. Accordingly, the parties previously stipulated to and the Court ordered that the entire Exhibit 13 in support of Plaintiffs' Motion to Compel be sealed, subject to AWS reviewing the transcript and making appropriate designations. *See* Dkt. 87. AWS has made the relevant confidentiality designations, and it is filing excerpts of the Simmons Transcript (including those submitted as Exhibit 13 with Plaintiffs' Motion to Compel) with its Opposition to Plaintiffs' Motion to Compel. *See* Declaration of Nicola Menaldo in Support of AWS's Opposition to Plaintiffs' Motion to Compel, Ex. H. Defendant is filing concurrently with this motion a separate sealing motion addressing the exhibits supporting AWS's Opposition.

1 AWS does not oppose the Court lifting the redactions Plaintiffs previously applied to
2 their Motion to Compel brief. *See* Dkt. 83.

3 The parties have conferred, and Plaintiffs do not object to the sealing of the unredacted
4 Simmons Transcript that Plaintiffs filed as Exhibit 13 to their Motion to Compel. (Dkt. 83-13.) If
5 this motion is granted, Plaintiffs will publicly file the relevant portions of the Simmons Transcript
6 with redactions the parties have agreed to.

7 **II. CERTIFICATION PURSUANT TO LOCAL RULE 5(g)(3)(A)**

8 Pursuant to Local Civil Rule 5(g)(3)(A), counsel for AWS, Nicola Menaldo and Mylan
9 Traylor, met and conferred with counsel for Plaintiffs, Schuyler Ufkes, via Zoom on August 30,
10 2023, regarding the need to file the above-referenced documents under seal, ways to minimize
11 the content to be filed under seal, and other alternatives to filing under seal.

12 **III. BACKGROUND AND SEALED MATERIALS**

13 This case involves claims under the Illinois Biometric Information Privacy Act (“BIPA”)
14 in connection with AWS’s Rekognition technology. *See* Dkt. No. 44. Recognizing that
15 confidential and commercially sensitive information would likely be at issue in this case, the
16 parties submitted an agreed Protective Order, which permits the parties to designate certain
17 documents, testimony, and other discovery materials as “Confidential” and/or “Highly
18 Confidential – Attorneys’ Eyes Only,” and the Court entered it. Dkt. 55. The Protective Order
19 provides that documents marked as “Confidential” or “Highly Confidential – Attorneys’ Eyes
20 Only” shall not be disclosed, with the exception of disclosure to a limited group of individuals.
21 *Id.* at ¶ 5.

22 AWS seeks to seal portions of the Simmons Transcript that reveal three categories of
23 proprietary and sensitive information. **First**, AWS seeks to seal portions of the Simmons
24 Transcript that disclose highly sensitive information about its machine learning models
25 underlying the Rekognition service. This includes proprietary information about how the
26 Rekognition models are trained and operate. The machine learning models underlying the
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1 Rekognition service are an integral component of the Rekognition service, including operations
 2 known as CompareFaces and IndexFaces. *See* Declaration of Sean Flynn (“Flynn Decl.”) ¶ 4.
 3 AWS takes various steps to keep the details of its machine learning models secret, and disclosure
 4 of such information would cause AWS significant competitive harm, as it could potentially allow
 5 competitors to replicate AWS’s models or improve their own machine learning models. *See id.*

6 **Second**, AWS seeks to seal portions the Simmons Transcript that disclose information
 7 about the architecture and processes underlying the Rekognition Service. Disclosure of this non-
 8 public information would reveal how the Rekognition service, including CompareFaces and
 9 IndexFaces, is structured and operates. Importantly, the details of at least one security measure
 10 are discussed in the relevant documents. Flynn Decl. ¶ 5. Disclosure of this information would
 11 cause AWS significant harm. Indeed, beyond the significant competitive harm associated with
 12 disclosure, these details could potentially be used by bad actors to initiate an attack on AWS’s
 13 services. *Id.* For exactly these reasons, AWS keeps this information confidential. *Id.*

14 **Third**, AWS seeks to seal information regarding the identity of AWS Rekognition
 15 customers that used the CompareFaces service. While AWS publicly discloses the names of
 16 some of its customers, it does not disclose the names of all customers. Flynn Decl. ¶ 7. AWS
 17 keeps this information secret, and disclosing this information could cause competitive harm to
 18 AWS. *Id.*

19 IV. **LEGAL STANDARD**

20 Although “[t]here is a strong presumption of public access to the court’s files,” Local
 21 Civil Rule 5(g), that presumption may be overcome where, as here, the moving party has
 22 “compelling reasons” to seal the document appended to a dispositive motion, *In re Microsoft*
 23 *Xbox 360 Scratched Disc Litig.*, No. C07-1121-JCC, 2009 WL 481325, at *1 (W.D. Wash. Feb.
 24 24, 2009); *Karpenski v. Am. Gen. Life Companies, LLC*, No. C12-1569RSM, 2013 WL
 25 3191878, at *5 (W.D. Wash. June 20, 2013) (“[A] party seeking to seal a judicial record attached
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1 to a dispositive motion or presented at trial must articulate ‘compelling reasons’ in favor of
 2 sealing.”).

3 Compelling reasons exist where “sealing is required to prevent judicial documents from
 4 being used as sources of business information that might harm a litigant’s competitive standing.”
 5 *Karpenski*, 2013 WL 3191878, at * 6 (internal quotations omitted); *see also In re Elec. Arts, Inc.*,
 6 298 F. App’x 568, 569 (9th Cir. 2008) (“[T]he common-law right of inspection has bowed before
 7 the power of a court to insure that its records are not used . . . as sources of business information
 8 that might harm a litigant’s competitive standing.” (quoting *Nixon v. Warner Commc’ns, Inc.*,
 9 435 U.S. 589, 598, (1978))); *In re Microsoft Xbox 360 Scratched Disc Litig.*, 2009 WL 481325,
 10 at *1 (finding “compelling reasons” to seal “confidential business information” because “these
 11 materials contain proprietary information that would cause Defendant competitive harm if
 12 disclosed”); *Saint Alphonsus Med. Ctr.–Nampa, Inc. v. St. Luke’s Health Sys., Ltd.*, No. 1:12-
 13 CV-00560- BLW, 2014 WL 3101716, at *3 (D. Idaho July 3, 2014) (finding “compelling
 14 reasons” to seal “sensitive financial information that would be damaging if revealed.”).

15 Sealing is particularly appropriate where sealed exhibits contain “confidential business
 16 information regarding . . . technical specifications and other attributes” that “would cause
 17 Defendant competitive harm if disclosed.” *In re Microsoft Xbox 360 Scratched Disc Litig.*, 2009
 18 WL 481325, at *1. And sealing is also appropriate where documents reveal customer names and
 19 related information. *See, e.g., Silver Fern Chem., Inc. v. Lyons*, No. 2:23-CV-00775-TL, 2023
 20 WL 4624477, at *2 (W.D. Wash. July 19, 2023) (permitting sealing of “customer identities and
 21 their associated needs and transactions”); *Johnstech Int’l Corp. v. JF Microtechnology SDN*
 22 *BHD*, No. 14-CV-02864-JD, 2016 WL 4091388, at *3 (N.D. Cal. Aug. 2, 2016) (permitting
 23 redaction of “specific customer names and the percentage of business” obtained from those
 24 customers); *In re Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2013 WL 5366963, at *3
 25 (N.D. Cal. Sept. 25, 2013) (sealing information about the Gmail system based on Google's
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1 assertions that “hackers and spammers could use this information to circumvent Google's anti-
2 virus and anti-spam mechanisms”).

3 **V. ARGUMENT**

4 Compelling reasons exist to maintain the confidential and proprietary information
5 contained in the documents described above under seal. As referenced above, AWS does not
6 publicly disclose the redacted information regarding its machine learning models, Rekognition
7 architecture and processes, and customer identities. Indeed, AWS takes extensive measures to
8 keep this information secret, which include limiting employee access to much of this information
9 by technical controls.

10 Public disclosure of this information could cause significant harm to AWS in a variety of
11 ways. The relevant technical information about AWS’s machine learning models and
12 Rekognition design and operation could, if disclosed, allow AWS competitors to gain insight
13 into how AWS’s proprietary models and API systems function, thus providing third parties with
14 a competitive advantage in an extremely competitive industry. Flynn Decl. ¶ 4. And outside
15 actors having access to information about Rekognition’s structure could use that information to
16 launch malicious attacks on AWS. *Id.* ¶ 6. Finally, allowing the public access to the identity of
17 Rekognition customers and the number of customers that use certain services could “harm
18 [AWS’s] competitive standing.” *Id.* ¶ 7; *Continental Auto. Sys., Inc. v. Avanci, LLC*, 2019 WL
19 6612012, at *4 (N.D. Cal. Dec. 5, 2019) (citation omitted); *see e.g., Johnstech Int’l Corp. v. JF*
20 *Microtechnology SDN BHD*, No. 14-CV-02864-JD, 2016 WL 4091388, at *3 (N.D. Cal. Aug. 2,
21 2016) (granting motion to seal “specific customer names and the percentage of business to those
22 customers”).

23 AWS has sought to minimize the amount of material to be sealed in the Simmons
24 Transcript, and less restrictive means are not available. Rather than moving to file the entire
25 Simmons Transcript under seal, AWS seeks only to redact material that reflects proprietary and
26 commercially sensitive information, which goes beyond what would aid the public in
27 understanding the parties’ positions and the judicial process. *See Coloplast A/S v. Generic Med.*
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1 *Devices, Inc.*, No. 10-0227, 2012 WL 3629037, at *1–2 (W.D. Wash. Aug. 22, 2012) (granting a
 2 motion to seal a motion, provided that the party submit a version that redacts any portion
 3 referencing the confidential exhibits); *see generally Richardson v. Mylan, Inc.*, No. 09-CV-1041-
 4 JM (WVG), 2011 WL 837148, at *2 (S.D. Cal. Mar. 9, 2011) (finding sealable information of
 5 comparatively little value to the general public in terms of enhancing its understanding of the
 6 judicial process). Furthermore, this information (including highly technical information about
 7 Rekognition and its machine learning models) provides little-to-no value in terms of aiding the
 8 public in understanding the parties’ positions on the Motion to Compel and the judicial process
 9 in this case. No other public interest reasons justify disclosure of this information. For example,
 10 the information does not affect public health and safety and does not concern any public entities
 11 or officials. The confidential information concerns only business and technical information that
 12 would cause competitive harm to AWS if it was made public. Flynn Decl. ¶ 3.

14 Finally, in the parties’ telephonic meet and confer regarding this Motion to Seal, counsel
 15 for Plaintiffs indicated that Plaintiffs do not oppose AWS’s instant Motion to Seal.

16 VI. CONCLUSION

17 For the foregoing reasons, AWS respectfully requests an order allowing it to maintain the
 18 Simmons Transcript (Dkt. 83-13) under seal, and Plaintiffs will publicly file the relevant portions
 19 of the Simmons Transcript with redactions the parties have agreed to.

21 Dated: August 31, 2023

By: /s/ Nicola C. Menaldo

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ORDER

Having reviewed the Defendant Amazon Web Services, Inc.'s Unopposed Motion to Maintain Under Seal Exhibit 13 Filed in Support of Plaintiffs' Motion to Compel, the Court GRANTS the Motion and ORDERS that within seven (7) days of this Order, Plaintiffs shall publicly file the relevant portions of the Simmons Transcript (Dkt. 83-13) with redactions the parties have agreed to.

IT IS SO ORDERED.

Dated: September 1, 2023

By: 
Hon. John H. Chun
U.S. District Court Judge

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on August 31, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail Notice List.

Dated: August 31, 2023

/s/ Nicola C. Menaldo
Nicola C. Menaldo